IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 658 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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MOHMAD ARIF YAKUB MEMON - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR DAXESH T DAVE for Applicant(s) : 1,
MR M.R.MENGDEY, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
MR SIKANDER SAIYED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 22/08/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, read with Section 482 of

the Criminal Procedure Code, the petitioner - original accused has prayed for an appropriate order to quash and set aside the FIR being CR No. 147 /2007 registered with Varachha Police Station, Surat for the offences punishable under Sections 365, 384, 323, 504, 503 of the Indian Penal Code (for short "***IPC***").

2. A criminal complaint / FIR has been filed by one Noorjanh on 28.03.2007 at Varachha Police Station, Surat against the petitioner and others for the offences punishable under Sections 365, 384, 323, 504, 503 of the IPC alleging *inter-alia* that on 28.03.2007 the petitioner and one another came near the house of the complainant and had shown one newspaper and told what is written in the newspaper and the petitioner told that the complainant is supplying / selling liquor against which the complainant told how the petitioner can write anything against her. At that time the complainant was dragged up to near by ST Depot and was beaten and the petitioner has threatened that why complainant has stopped selling liquor and told that she should start selling liquor and pay *Hafta* to him, otherwise he would start writing in the newspaper; that he also told that he knows so many things against the persons

who are selling liquor. It is alleged that at that time when the complainant said that she is not selling liquor, at that time the petitioner has threatened the complainant to start selling liquor, otherwise life of her children and herself would be in danger. Therefore, it is alleged in the complaint that the petitioner is time and again harassing her and extorting money. Therefore, it is alleged that the petitioner and another have committed the offences as alleged. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present petition under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code to quash the impugned complaint / FIR.

3. Mr.Dave, learned Advocate appearing on behalf of the petitioner has vehemently submitted that the petitioner is a press reporter of one daily newspaper 'Samna Bhrastacharka'. Being press reporter, he is publishing news in the said newspaper regarding illegal activities like selling liquor, gambling and prostitution etc. and on 28th March, 2007 the petitioner requested the concerned Police Officer to take action in this behalf. It is stated by him

that respondent No.2- original complainant is selling liquor and doing illegal activities not permitted under the law and to harass the petitioner, impugned complaint has been filed / registered. It is submitted that Managing Director and Proprietor of above newspaper had initially written a letter to the Secretary Gujarat Takedari Aayog, Gandhinagar stating that the press reporters are being harassed by the concerned Police Officer and therefore, it was requested to give protection. It is submitted that impugned FIR has been filed as pressure tactics and to harass the petitioner with a *mala fide* intention and therefore, it is requested to quash the impugned complaint / FIR.

4. On the other hand, Mr.Saiyed, learned Advocate appearing on behalf of respondent No.2 has denied the averments in the petition and has submitted that on bare reading of the complaint, allegations and averments in the complaint, it cannot be said that *prima-facie* cognizance offecence are not disclosed which does not require further investigation. Therefore, it is requested to dismiss the present application.

5. Mr.M.R.Mengdey, learned Additional Public

Prosecutor has also opposed the present petition and has submitted that under the guise of press reporting and running newspaper, the petitioner has indulged into illegal activities, blackmailing and extorting money. It is also further submitted by him relying upon the affidavit-in-reply submitted by Assistant Commissioner of Police, Surat City that under the pretext of running newspaper and as a reporter the petitioner is extorting money from the anti social elements carrying out illegal activities in the Surat City by pressurizing them and threatening to publish about their anti social activities in his newspaper. It is further submitted that considering the anti social activities of the petitioner, a proposal was sent under Section 56(3) of the Bombay Police Act for externing the accused i.e. the petitioner and vide letter dated 24.03.2005 order for good conduct and solvency of Rs.25,000/- was passed and in reply to the same, the petitioner gave Bond of Rs.25,000/- for his good conduct for a period of 2 years in order to restrain his activity in the interest of public law and order. It is submitted that Deputy Inspector General of Police, Gandhinagar vide letter dated 15.09.2005 informed the Commissioner of Police, to keep watch to his activities. It is further submitted

that in the past in the Surat City and other districts, in all nine cases have been registered against the petitioner for various offences under the IPC and looking to the past history for the offences registered against the petitioner and considering habit of the petitioner to extort money and indulging into illegal activities, requires further investigation in the complaint. It is requested to dismiss the present application.

6. Heard the learned Advocates appearing on behalf of the respective parties.

7. It is the contention on behalf of the petitioner – original accused that as the petitioner is press reporter of newspaper 'Samna Bhrastacharka' and is publishing news in the newspaper regarding illegal activities of other persons who are selling liquor, gambling, prostitution, the impugned complaint / FIR has been filed against the petitioner with a *mala fide* intention to harass the petitioner. It is also the case on behalf of the petitioner that no case is made out against the petitioner for the offences punishable under sections 365, 384, 323, 504, 503 of the IPC as alleged in the impugned FIR.

Therefore, it is requested to allow the present petition. Now considering the affidavit – in – reply filed on behalf of the Investigating Officer, *prima facie* it cannot be said that the petitioner is innocent person and is unnecessarily harassed by filing the impugned FIR. It appears from the affidavit – in – reply filed by the Investigating Officer – A.C.P., B-Division, In-Charge of 'A' Division, Surat that the petitioner under the pretext of being reporter of the newspaper is extorting the money from the anti social elements carrying out their activities in Surat City by pressuring and threatening them to publish about their anti social activities, thus the petitioner is blackmailing those persons. It also appears from the affidavit in reply of the Investigating Officer that considering anti social activities of the petitioner – original accused, a proposal was sent under Section 56(3) under the Bombay Police Act for externing him and vide order dated 24.03.2005 order for good conduct and solvency of Rs.25,000/- was to be executed and in reply to the same, the petitioner gave bond of Rs.25,000/- for his good conduct for a period of 2 years in order to restrain his activities in the interest of public law and order. It also appears

from the affidavit-in-reply filed by the Investigating Officer that against the petitioner in the past in the Surat City and other districts more than nine cases are registered for various offences under the IPC. Now considering above and considering the allegations and averments in the FIR, it cannot be said that the impugned FIR is so vexatious which requires to be quashed and set aside in exercise of powers under Section 482 of the Criminal Procedure Code. Considering the allegations and averments in the complaint, it appears to the Court that the complaint requires further investigation and is not required to be quashed and set aside and restrain the Police from further investigation/FIR at the threshold.

8. So far as the allegations of *mala-fide* are concerned, as held by Hon'ble Supreme Court in the case of ***State of Orissa and Anr. V/s. Saroj Kumar Sahoo*** reported in *(2005) 13 SCC 540*, same are not required to be dealt with and/or considered at the time of investigation. If after investigation, no case is made out against the petitioner in that case appropriate report will be submitted by the Police / Investigating Officer and if after investigation

charge-sheet is filed, remedy is available with the petitioner under the provisions of the Criminal Procedure Code like submitting an application under Section 227 of the Criminal Procedure Code etc.

9. In the facts and circumstances of the case and considering the decision of the Hon'ble Supreme Court in the case of ***Saroj Kumar Sahoo*** (supra) and in the case of ***State of Karnataka & Anr. v/s. Pastor P.Raju*** reported in *AIR 2006 SC 2825*, the present petition requires dismissal and complaint/FIR is not required to be quashed and set aside in exercise of powers under Article 226 of the Constitution of India and/or under Section 482 of the Criminal Procedure Code.

10. For the reasons stated above, the petition requires to be dismissed and accordingly it is dismissed. Notice discharged.

[M.R.Shah, J.]

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